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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/588,091	07/28/2006	John M. Stencel	1284-001	4355		
1009	7590	08/21/2008	EXAMINER			
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507				KWOK, HELEN C		
ART UNIT		PAPER NUMBER				
2856						
MAIL DATE		DELIVERY MODE				
08/21/2008		PAPER				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/588,091	STENCEL, JOHN M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Helen C. Kwok	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on May 6, 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4 and 8-16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 7,153,396 (Genser).

With regards to claims 1-4 and 8-12 Genser discloses a rotating evaporator comprising, as illustrated in Figures 1-3, a plurality of passive sensors 14,15 (i.e. hydrophone) for generating an output signal representative of an acoustic emission associated with a foam M of an object (i.e. liquid F); a controller 60 in communication with the passive sensor for receiving the output signal and providing a response. Furthermore, a signal for activating a source of foam suppressant positioned adjacent the liquid; the response provides a signal for activating an alert (i.e. display device); a precursor material (i.e. a column of liquid F) includes a heater (not illustrated, but disclosed) for heating the precursor material is susceptible to foaming wherein the passive sensors are positioned at/above/below the surface of the liquid F. (See, column 11, line 39 to column 14, line 27).

With regards to claims 13-16, the claims are commensurate in scope with the

above claims and are rejected for the same reasons as set forth above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 5-7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 7,153,396 (Genser) in view of U.S. Patent 6,484,568 (Griffith et al.).

With regards to claim 5, Genser does not explicitly suggests a system for testing a mineral admixture for making concrete. Griffith et al. discloses an apparatus for testing foamed fluids comprising, as illustrated in Figures 1-6, foaming apparatus for making a concrete/cement with the foam and having a vessel 15 for receiving the mineral admixture. (See, column 3, line 32 to column 5, line 28). It would have been well known to an artisan in the art to have readily recognize the advantages and desirability of combining the device with a system for testing a mineral admixture for making concrete/cement as suggested by Griffith et al. to the apparatus of Genser wherein the characteristics of the concrete/cement can be monitored to maintain steady pressure on the foamed fluid so that the transfer process can provide a constant density of the foamed fluid from sample to sample. (See, column 1, line 48 to column 2, line 8).

With regards to claims 6-7, Griffith et al. further discloses a source of an air

entraining agent added to the admixture such that the response includes a signal for activating an agitator. (See, column 3, line 32 to column 5, line 28).

With regards to claim 17-20, the claims are commensurate in scope with claims 5-7 and are rejected for the same reasons as set forth above.

***Response to Amendment***

5. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen C. Kwok whose telephone number is (571) 272-2197. The examiner can normally be reached on 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen C. Kwok/  
Primary Examiner, Art Unit 2856  
August 18, 2008